IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2670 OF 2004

Uday Shankar Shukla ... Petitioner

versus

The State of Maharashtra ... Respondent

...

Mr. A.M. Saraogi, for the Petitioner.

Mr. A.S. Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

17th February 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Gadkari, A.P.P., waives notice for the Respondent. As short question is involved, petition taken up for final disposal forthwith by consent.

2. The Petitioner was arrested in connection

with CR.No. 309/2004 registered with Dindoshi Police Station. His licensed firearm was seized by the police during investigation of the said case. Later on, the Petitioner was released on bail, whereafter, he applied for direction to the investigating officer to return the licensed revolver, which was owned and possessed by him and presently in custody of the investigating officer. That application was granted by the Sessions Court vide order dated 16th November 2004. As per the directions contained in the said order, the investigating officer returned the licensed firearm to the Petitioner by end of November 2004. Interestingly, soon thereafter, the concerned investigating officer called upon the Petitioner to appear in the police station along with the licensed firearm for the purposes of inspection. That communication was sent on 8th December 2004. Accordingly, the Petitioner appeared before the investigating officer along with the licensed firearm on 10th December 2004. On that day, instead of inspecting the weapon, the concerned investigating officer, without giving formal show cause notice or reasons why the weapon was

required to be taken into custody, proceeded to take charge of the said weapon and informed the Petitioner that the same has been taken into custody. In this backdrop, the Petitioner has approached this Court.

3. The grievance of the Petitioner is that the application preferred by the Petitioner before the Sessions Court for return of the weapon was hotly contested, and having failed in that effort, the investigating officer, out of vengeance, took custody of the weapon in such high-handed manner, without even giving formal notice or without mentioning any reasons why the weapon is taken into custody.

4. Taking overall view of the matter, to my mind, there is substance in this grievance. The learned A.P.P., however, made an effort to justify the action by suggesting that proceedings for cancellation of licence already granted to the Petitioner were in contemplation and for which reason the action of the investigating officer can be justified. However, the learned A.P.P. fairly accepts that as per the provisions

of the Arms Act and the Rules, in any case, to observe the principles of natural justice, it was expected of the investigating officer that a formal show cause notice ought to have been given, more particularly indicating the reason why the custody of the weapon was required to be taken on urgent basis before the conclusion of proceedings for cancellation of licence. This is obviously not done in the present case, and more particularly, when there is already an order operating in favour of the Petitioner for return of the property passed by the Court of competent jurisdiction, after the application for return of property was contested by both sides.

5. In the circumstances, the manner in which the custody of the licensed weapon has been taken from the Petitioner cannot be sustained for which reason, the petition should succeed in terms of prayer clause (a).

6. As a consequence, the licensed weapon be returned to the Petitioner forthwith on the assurance given by the Petitioner, through his Counsel, that the same will not be used in any

manner till further orders are passed by the trial Court or by the authorities in relation to proceedings for cancellation of licence, as may be permissible by law.

7. It is made clear that all issues in the proceedings for cancellation of licence, which are in contemplation, are kept open, to be decided on its own merits in accordance with law, uninfluenced by any observations made in this order.

. Ordered accordingly.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)